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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
Revision of Part 2 of the )  
Commission's Rules Relating ) ET Docket No. 94-45  
to the Marketing and ) RM-8125  
Authorization of Radio )  
Frequency Devices )

COMMENTS OF ASSOCIATION FOR MAXIMUM  
SERVICE TELEVISION, INC.

The Association for Maximum Service Television, Inc.  
("MSTV") hereby files comments to the Notice of Proposed  
Rulemaking, ET Docket No. 94-45, released in the above  
captioned docket on June 9, 1994 (the "Notice").<sup>1/</sup>

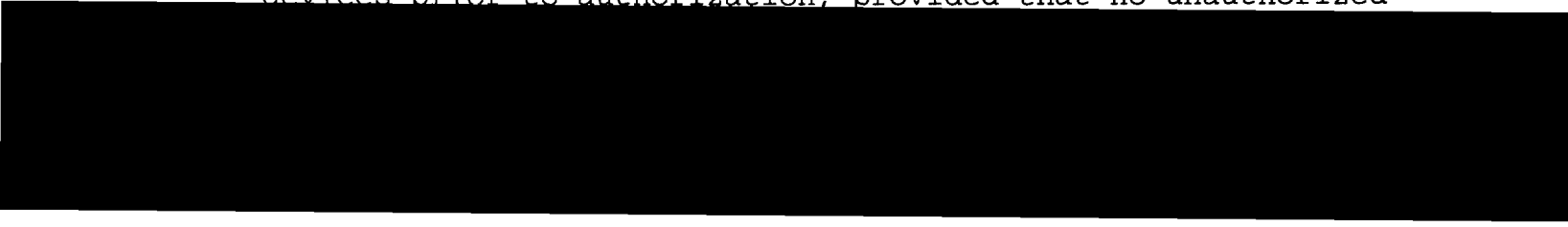
**BACKGROUND FACTS**

In a Petition for Rulemaking filed on October 16,  
1992, the Electronics Industry Association (EIA) asks that the  
Commission liberalize Part 2 of its rules to permit the  
marketing and sale of unauthorized radio frequency devices.<sup>2/</sup>

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<sup>1/</sup> MSTV is a non-profit trade association of local broadcast  
television stations committed to achieving the highest  
technical quality feasible for the local broadcast system.  
MSTV has a longstanding and vital interest in maintaining the  
viability of free, universal, over-the-air television  
broadcasting, and is deeply concerned about the need for  
continued uninterrupted access to interference-free spectrum  
for both primary and auxiliary broadcast operations.

<sup>2/</sup> Specifically, EIA asks that manufacturers be allowed:  
(1) to advertise, display, and announce new radio frequency  
devices prior to formal Commission authorization, provided  
that any promotional materials contain a warning stating that  
the product has not yet received Commission approval, (2) to  
operate unauthorized radio frequency devices at trade shows  
and conventions, (3) to sell unauthorized radio frequency  
devices prior to authorization, provided that no unauthorized



EIA argues that its proposed revisions "would benefit consumers and those entities involved in developing and marketing consumer products without risking increased radio interference." EIA/CEG, Petition for Rulemaking, at 9 (October 16, 1992) (emphasis in original).

MSTV does not oppose EIA's proposed modifications of the Commission's rules relating to advertising, announcing, or displaying unauthorized radio frequency devices, with appropriate disclaimers. Moreover, MSTV has no objection to the operation of these devices at trade shows and similar events, provided that manufacturers take reasonable precautions to ensure that such demonstrations do not cause interference to licensed operations, including television broadcasting.<sup>3/</sup> However, MSTV is concerned that the proposed revisions will exacerbate an undesirable trend to permit the sale and operation of radio frequency devices that degrade the quality of licensed services without carefully considering the synergistic effects of the additional spurious emissions on the quality of licensed services. The Commission should consider carefully the effects of increased interference to

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<sup>2/</sup>(...continued)

devices are actually delivered, and (4) to test unauthorized radio frequency devices on-site at customer's homes or places of business. EIA/CEG, Petition for Rulemaking, at 11-13 (October 16, 1992).

<sup>3/</sup> In this regard, MSTV endorses the National Association of Broadcasters' proposal to require manufacturers to certify that they have conducted preliminary interference testing. See Comments of the NAB, RM-8125, at 2-3 (December 24, 1992).

licensed operations that adoption of some of the EIA proposals will undoubtedly cause.

**I. The Commission Should Not Lightly Relax Rules Designed to Prevent Interference to Licensed Operations, Including Television Broadcasting.**

Once again, the manufacturers of various RF producing equipment are seeking the liberalization of the Commission's authorization procedures. As with many of these requests -- but by no means all -- this most recent request appears facially to present a small risk of interference to broadcast television reception when considered in isolation.

However, the Commission must not lose sight of the "fundamental purpose" of its equipment authorization rules: the protection of licensed applications from interference caused by the operation of unlicensed devices. See In the Matter of Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License, 6 FCC Rcd 1683, 1686 (1991). As the Commission has previously observed, "[e]quipment subject to certification is placed in that category because there is sufficient risk of interference if noncompliance occurs that scrutiny of measurement results by the Commission is warranted." Id.

MSTV has repeatedly warned of the dangers of the "AM-ization" of television broadcast spectrum.<sup>4/</sup> The

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<sup>4/</sup> See, e.g., Comments of MSTV, ET Docket No. 93-235 (December 8, 1993); Comments of MSTV, ET Docket No. 92-255 (March 1, 1993); Comments of MSTV, Gen. Docket No. 89-349 (September 29, 1989); Reply Comments of MSTV, Gen. Docket No. (continued...)

incremental degradation of broadcast spectrum from a host of delivery mechanisms will ultimately lead to spectrum chaos. MSTV has explored these issues in some detail in a "Petition for Inquiry" ("Petition") previously filed with Commission.<sup>4/</sup> In the years following the filing of the Petition, the problem of unintentional interference from non-broadcast sources has only grown more acute.

This proceeding demonstrates once again the need for the Commission to take a comprehensive look at the issue of unintentional electromagnetic emissions that cause interference to broadcasting services. MSTV requests that the Commission take action on the Petition, which has been pending without action now for almost five years. The Commission should consider both the individual effects that its proposed marketing and testing rules will have and the cumulative effects that the addition of these interference sources will create. Petition, at 28-34.

Recent events suggest that broadcasters would not be the only beneficiaries of such a proceeding. See Knudson & Bulkeley, "Clutter on Airwaves Can Block Workings of Medical

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<sup>4/</sup>(...continued)  
83-325 (June 3, 1983); see generally In the Matter of Request for Waiver by Transtrack, Inc., 3 FCC Rcd 6833 (PRB 1988) (reporting MSTV's concerns about interference characteristics of "meteor burst" AVM system).

<sup>5/</sup> MSTV, Petition for Inquiry (October 4, 1989) (cataloguing the numerous sources of licensed interference to broadcast television and asking for comprehensive FCC oversight and assessment of such interference) ("Petition").

Electronics," The Wall Street Journal, § A, at 1 (June 15, 1994). Unintentional radio frequency emissions from devices such as cellular telephones and personal computers have allegedly caused a variety of medical devices to malfunction, including wheelchairs, ventilators, and pace makers, sometimes with tragic consequences. Id.; see also "Emissions From Wireless Devices Cause Critical Medical Equipment to Fail," Communications Daily, at 2 (June 16, 1994). Plainly, the pollution of the airwaves by devices generating unintentional radio frequency emissions is a problem that is not simply going to go away. On the contrary, all of the available evidence suggests that the Commission should expect more frequent interference problems, with graver consequences.

In this proceeding, it is proposed to further weaken the Commission's rules against the sale and use of unauthorized radio frequency devices. Policies that take into consideration potential new sources of interference individually, but not collectively, create a significant risk of understating the net effects of the interference. It increasingly appears that the Commission cannot see the forest that is quickly growing up because it constantly limits its focus to particular trees. This process does not, and indeed cannot, adequately protect against the degradation of broadcast spectrum.

**II. The Commission's Proposed Rules Are Too Lenient and Create an Unacceptable Risk of Unintentional Interference to Broadcast Television and Other Licensed Services.**

MSTV believes that some of the proposals set forth in the EIA Petition go too far toward liberalizing the pre-certification marketing and testing rules, even with the Commission's attempts to moderate their sweep. For example, EIA has suggested that the rules should permit individual consumers to purchase radio frequency devices prior to certification, provided these devices are not delivered.

MSTV agrees with the Commission that "it would not be realistic to permit consumer devices to be offered for sale to potentially millions of people and expect delivery of the devices to await a Commission authorization." Id. Indeed, MSTV believes that the Commission's conclusion that enforcement of such a rule would be "unmanageable" is something of an understatement.

The Commission nevertheless proposes authorizing the pre-sale of unauthorized equipment to "business, commercial, industrial, scientific, and medical users," i.e., to any entity other than an individual consumer. Notice, at ¶ 9. This rule sweeps too broadly, for the reasons already identified by the Commission.

Although the certification process is usually reasonably speedy, products that generate interference to licensed operations, i.e., the very products that should not go on the market, are the products for which the approval

process will take the longest time. Businesses and commercial entities that have "pre-purchased" equipment are unlikely to wait for months, or even years, for delivery of the devices pending resolution of technical problems. In turn, manufacturers will be under intense pressure to release unauthorized devices prior to obtaining formal Commission approval. See Notice, at ¶ 9. If hundreds of thousands of small businesses pre-purchase a new printer or personal computer, is it any less likely that the Commission will be unable to enforce its rules than if "millions" of individual consumers pre-purchase a product?

It is unclear, at least to MSTV, how sales to businesses and commercial entities pose a significantly lesser threat to licensed operations (including broadcasting) than sales to individual consumers. Because the broad based pre-sale of unauthorized equipment to business and commercial users other than industrial, medical, and scientific users will create tremendous pressure to release unauthorized equipment, the Commission should not further erode its proscriptions against selling unauthorized equipment.

Relatedly, MSTV believes that the Commission's proposal to permit on-site testing of unauthorized equipment is too broad. See Notice, at ¶ 10. The Commission has proposed allowing on-site testing of equipment at locations maintained by "business, commercial, industrial, scientific, and medical users." Id.

If a business may "pre-purchase" a new piece of equipment, Notice, at ¶ 9, but the equipment can be delivered only if necessary to facilitate "testing" of the device, Notice, at ¶ 10, the Commission should assume that the incidence of on-site "testing" of unauthorized equipment will increase dramatically. MSTV believes that the Commission should further strengthen proposed section 2.803(e)(4) by requiring manufacturers to certify to the Commission that on-site testing for a particular product is the only feasible means of determining compliance characteristics before undertaking delivery or operation of an unauthorized device at a customer's place of business. Moreover, an explanatory note to section 2.803(e)(4) should make clear that on-site testing of "standard electronic office equipment," such as printers, is not permitted.

The Commission also proposes to allow compliance testing to be performed "at the customer's location after sale and installation." Notice, at ¶ 6. With all due respect, the incidence of equipment failing post-sale, post-installation testing is likely to be very low indeed.

Once again, the Commission attempts to temper the impact of its rule by permitting such compliance testing only in "business, commercial, industrial, scientific, and medical user sites." However, the inclusion of "business" and "commercial" buyers encompasses everyone from an insurance salesman with a garage office, to a corner florist, to IBM.



Simply put, the exception as proposed will effectively swallow the rule. The Commission must limit the sweep of its proposed rule, perhaps by limiting it to industrial, medical, and scientific purchasers.<sup>5/</sup>

### CONCLUSION

The Commission has admitted its inability to police the market effectively to ensure that unauthorized radio frequency equipment is not routinely sold to and operated by individual consumers. Notice, at ¶ 9. If licensed users are to be adequately protected from spurious radio frequency emissions, the Commission cannot sanction the broad-based presale of unauthorized radio frequency devices. The proposed revisions to Part 2, and particularly the pre-sale rules, will likely cause the further pollution of the spectrum, degrading the quality and reliability of licensed services, including broadcast television. In consequence, the revisions regarding


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<sup>5/</sup> Such a limitation would help to facilitate effective enforcement activities, because the potential locations of unauthorized equipment would be relatively limited. Moreover, such a rule would significantly reduce -- but not eliminate -- the danger that an unauthorized device will be operated in a residential area, where the potential effects of interference are especially pronounced.

the sale and testing of unauthorized devices as proposed in the Notice should not be not be adopted.

Respectfully submitted,

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